

**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

SHAWN HODGES,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. 1:21-cv-01122-SAB

FINDINGS AND RECOMMENDATIONS  
RECOMMENDING DENYING  
PLAINTIFF'S APPLICATION TO  
PROCEED *IN FORMA PAUPERIS* AND  
REQUIRING PLAINTIFF TO PAY THE  
FILING FEE AND DIRECTING CLERK OF  
THE COURT TO RANDOMLY ASSIGN A  
DISTRICT JUDGE

(ECF No. 4)

OBJECTIONS DUE WITHIN FOURTEEN  
DAYS

Plaintiff Shawn Hodges filed a complaint on July 23, 2021, challenging a final decision of the Commissioner of Social Security denying his application for disability benefits. Plaintiff did not pay the filing fee in this action and instead filed an application to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. (ECF No. 2.) On July 28, 2021, an order issued finding that Plaintiff's application to proceed *in forma pauperis* did not demonstrate entitlement to proceed in this action without prepayment of fees. (ECF No. 3.) Plaintiff was ordered to either file a long form application to proceed without prepayment of fees or pay the filing fee. (*Id.*) On August 4, 2021, Plaintiff filed a long form application. (ECF No. 5.)

In order to proceed in court without prepayment of the filing fee, a plaintiff must submit an affidavit demonstrating that he "is unable to pay such fees or give security therefor." 28 U.S.C. § 1915(a)(1). The right to proceed without prepayment of fees in a civil case is a privilege and not a right. Rowland v. California Men's Colony, Unit II Men's Advisory Council, 506 U.S. 194, 198 n.2 (1993); Franklin v. Murphy, 745 F.2d 1221, 1231 (9th Cir. 1984)

1 (“permission to proceed *in forma pauperis* is itself a matter of privilege and not right; denial of  
2 *in forma pauperis* status does not violate the applicant’s right to due process”). A plaintiff need  
3 not be absolutely destitute to proceed *in forma pauperis* and the application is sufficient if it  
4 states that due to his poverty he is unable to pay the costs and still be able to provide himself and  
5 his dependents with the necessities of life. Adkins v. E.I. DuPont de Nemours & Co., 335 U.S.  
6 331, 339 (1948). Whether to grant or deny an application to proceed without prepayment of fees  
7 is an exercise of the district court’s discretion. Escobedo v. Applebees, 787 F.3d 1226, 1236 (9th  
8 Cir. 2015).

9 In assessing whether a certain income level meets the poverty threshold under Section  
10 1915(a)(1), courts look to the federal poverty guidelines developed each year by the Department  
11 of Health and Human Services. See, e.g., Paco v. Myers, No. CIV. 13-00701 ACK, 2013 WL  
12 6843057 (D. Haw. Dec. 26, 2013); Lint v. City of Boise, No. CV09-72-S-EJL, 2009 WL  
13 1149442, at \*2 (D. Idaho Apr. 28, 2009) (and cases cited therein).

14 Plaintiff claims his spouse receives \$3,000 per month in employment income, and  
15 receives \$2,000 per month from his father-in-law as a gift to assist with the mortgage. (ECF No.  
16 4 at 1-2.) Thus Plaintiff claims \$5,000 per month, or \$60,000 per year in income in this portion.  
17 However, the Court notes that in specifically listing the spouse’s employment in another section,  
18 Plaintiff proffers the spouse earns \$6,000 per month, which would equate to \$72,000 per year  
19 just in employment income. (Id. at 2.) Plaintiff claims two seventeen year old children, and one  
20 twenty-two year child as dependents. (Id. at 3.) Plaintiff claims monthly expenses in the amount  
21 of \$4,800, including \$700 in utilities, \$250 in home maintenance, and car and car insurance  
22 payments totaling \$800 per month.

23 The 2021 Poverty Guidelines for the 48 contiguous states for a household of five is  
24 \$31,040.00. 2021 Poverty Guidelines, <https://aspe.hhs.gov/poverty-guidelines> (last visited  
25 August 6, 2021). Based on the income reported in Plaintiff’s application to proceed *in forma*  
26 *pauperis*, of \$5,000.00 per month, Plaintiff’s household income is at least \$60,000 per year, and  
27 perhaps significantly above that given the discrepancy in the listed employment income of the  
28 spouse. Even based on the \$60,000 per year, the income is well beyond the poverty level. In

1 consideration of the income and expenses listed, Plaintiff demonstrates he can pay the costs and  
2 still be able to provide himself and his dependents with the necessities of life. If Plaintiff  
3 submits objections to this findings and recommendations, he is expected to address the  
4 discrepancy regarding the spouse's listed income, and further address the various expenses listed  
5 in the application, which appear excessive in relation to a claim of entitlement to proceed *in*  
6 *forma pauperis*.

7 Accordingly, IT IS HEREBY RECOMMENDED that Plaintiff's application to proceed  
8 *in forma pauperis* be DENIED and Plaintiff be ordered to pay the \$402.00 filing fee for this  
9 action.

10 The Clerk of the Court is DIRECTED to randomly assign this matter to a district judge.

11 This findings and recommendations is submitted to the district judge assigned to this  
12 action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court's Local Rule 304. Within **fourteen**  
13 **(14) days** of service of this recommendation, Plaintiff may file written objections to this findings  
14 and recommendations with the court. Such a document should be captioned "Objections to  
15 Magistrate Judge's Findings and Recommendations." The district judge will review the  
16 magistrate judge's findings and recommendations pursuant to 28 U.S.C. § 636(b)(1)(C). The  
17 parties are advised that failure to file objections within the specified time may result in the  
18 waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing  
19 Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

20 IT IS SO ORDERED.

21 Dated: August 6, 2021

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23 UNITED STATES MAGISTRATE JUDGE  
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